PACITA CAALIM-VERZONILLA, COMPLAINANT, VS. ATTY. VICTORIANO G. PASCUA, RESPONDENT.

A.C. No. 6655. October 11, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before the Court is the verified affidavit-complaint[1] of Pacita Caalim-Verzonilla seeking the disbarment of respondent Atty. Victoriano G. Pascua for allegedly falsifying a public document and evading the payment of correct taxes through the use of falsified documents.

Complainant alleges that on September 15, 2001, respondent prepared and notarized two Deeds of Extra-Judicial Settlement of the Estate of Deceased Lope Caalim with Sale. The first deed[2] was for a consideration of P250,000 and appears to have been executed and signed by Lope's surviving spouse, Caridad Tabarrejos, and her children (complainant, Virginia Caalim-Inong and Marivinia Caalim) in favor of spouses Madki and Shirley Mipanga. The second deed[3]was for a consideration of P1,000,000 and appears to have been executed by and for the benefit of the same parties as the first deed. The two deeds have identical registration numbers, page numbers and book numbers in the notarial portion.

Complainant avers that both deeds are spurious because all the heirs' signatures were falsified. She contends that her sister Marivinia does not know how to sign her name and was confined at the Cagayan Valley Medical Center, Tuguegarao City, at the time the deeds were allegedly signed by her, as shown by a certification[4]from said hospital. The certification, dated February 6, 2004 and signed by Dr. Alice Anghad, Medical Officer IV, attested that Marivinia has been confined at the Psychiatry Ward of the Cagayan Valley Medical Center since May 3, 1999 after being diagnosed of "Substance Induced Psychosis" and "Schizophrenia, Undifferentiated Type."

Complainant further alleges that the two deeds were not presented to any of them and they came to know of their existence only recently. She further claims that the Community Tax Certificates[5] (CTCs) in her name and in the names of her mother and her sister Marivinia were procured only by the vendee Shirley and not by them. Complainant submits the affidavit[6] executed by Edwin Gawayon, Barangay Treasurer of C-8, Claveria, Cagayan, on August 3, 2002, attesting that the CTCs were procured at the instance of Shirley and were paid without the complainant and her co-heirs personally appearing before him. Gawayon stated that the signatures and thumbmarks appearing on the CTCs are not genuine and authentic because it can be seen with the naked eyes that the signatures are similar in all three CTCs.

Lastly, complainant alleges that the two deeds were used by respondent and Shirley to annul a previously simulated deed of sale[7] dated June 20, 1979 purportedly executed by Lope in favor of the spouses Madki and Shirley Mipanga. Said deed was likewise a complete nullity because at that time Shirley Mipanga was only sixteen years old and still single.

In his comment,[8] respondent admits having prepared and notarized the two disputed Deeds of Extra-Judicial Settlement of the Estate with Sale (subject deeds), but denies any irregularity in their execution. He claims that the

preparation and notarization of the subject deeds were made under the following circumstances:

In the morning of September 15, 2001, complainant, Caridad, Virginia and Shirley Mipanga went to his house and requested him to prepare a deed of sale of a residential lot located in Claveria, Cagayan. He was informed by the parties that the agreed purchase price is P1,000,000 and was presented the certificate of title to the property. Upon finding that the registered owner is "Lope Caalim, married to Caridad Tabarrejos" and knowing that Lope already died sometime in the 1980s, he asked for, and was given, the names and personal circumstances of Lope's surviving children. He asked where Marivinia was, but Caridad told him that Marivinia remained home as she was not feeling well. As Caridad assured him that they will fetch Marivinia after the deed of conveyance is prepared, he proceeded to ask the parties to present their CTCs. Caridad and Pacita, however, told him that they have not secured their CTCs while Virginia forgot to bring hers. So he instructed them to get CTCs from Claveria.

An hour later, Caridad and Shirley came back with the CTCs of Caridad, Virginia, complainant and Marivinia. After he finished typing the deed and the details of the CTCs, Caridad said that she will bring the deed with her to Claveria for her daughters to sign. He then told them that it was necessary for him to meet them all in one place for them to acknowledge the deed before him as notary public. It was agreed upon that they will all meet at the house of the Mipangas between 11:00 a.m. and 12:00 noon on that same day.

Respondent arrived at the Mipanga residence shortly before 12:00 noon. There he saw Shirley, Caridad, complainant, Pacita and Marivinia with two other persons whom he later learned were the instrumental witnesses to the execution of the document. Upon being informed that the parties have already affixed their signatures on the deed, he examined the document then inquired from the heirs if the signatures appearing therein were theirs and if they were truly selling the property for P1,000,000. The heirs answered in the affirmative, thereby ratifying and acknowledging the instrument and its contents as their own free and voluntary act and deed. Thus, he notarized the document and then gave the original and two carbon copies to Shirley while leaving two in his possession.

Respondent adds that Shirley thereafter asked him what steps were needed to effect registration of the deed and transfer of the title in her and her husband's name. He replied that all the unpaid land taxes should be paid including the capital gains tax, documentary stamp taxes and estate tax to the Bureau of Internal Revenue (BIR) which will then issue the necessary clearance for registration. When asked how much taxes are payable, he replied that it depends on the assessment of the BIR examiner which will be based on the zonal value or selling price stated in the deed of sale. He added that the estate taxes due, with interests and surcharges, would also have to be paid. Since the consideration for the sale is P1,000,000, the taxes payable was quite enormous. Shirley asked him who between the vendor and the vendee should pay the taxes, and he replied that under the law, it is the obligation of the vendors to pay said taxes but it still depends upon the agreement of the parties. He asked if there was already an agreement on the matter, but the parties replied in the negative.

Shirley then told the vendors that they should shoulder the payment of taxes. Caridad and her co-vendors, however, refused and said that a big portion of the P1,000,000 paid to them was already used by them to pay and settle their other obligations. Shirley then offered to pay one-half of whatever amount the BIR will assess, but Caridad insisted that another document be prepared stating a reduced selling price of only P250,000 so that they need not contribute to the payment of taxes since Shirley was anyway already willing to pay one-half of the taxes based on the selling price stated in the first deed. This resulted in a heated discussion between the parties, which was, however, later resolved by an agreement to execute a second deed. The prospect of preparing an additional deed, however, irritated respondent as it meant additional work for him. Thus, respondent went home.

Later, the parties visited respondent at his house and pleaded with him to prepare the second deed with the

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reduced selling price. Moved by his humane and compassionate disposition, respondent gave in to the parties' plea.

In the presence of all the heirs, the vendees and the instrumental witnesses, respondent prepared and notarized the second deed providing for the lower consideration of only P250,000. He used the same document number, page number and book number in the notarial portion as the first deed because according to him, the second deed was intended by the parties to supplant the first.

Respondent denies complainant's assertions that the two deeds are simulated and falsified, averring that as stated above, all the parties acknowledged the same before him. Likewise, he and his clients, the spouses Madki and Shirley Mipanga, presented the subject deeds as exhibits in Civil Case No. 2761-S also pending before the Regional Trial Court (RTC), Branch 12, of Sanchez Mira, Cagayan.

As to the allegation that Marivinia did not appear before him as she was allegedly under confinement at the Cagayan Valley Medical Center on September 15, 2001, respondent cites a medical certificate[9]stating that Marivinia was confined in said hospital from May 3, 1999 to August 10, 1999. He also points out that Marivinia is one of the plaintiffs in Civil Case No. 2836-S pending before the RTC, Branch 12, Sanchez Mira, Cagayan, for the annulment of the subject deeds, and nothing in the complaint states that she is mentally or physically incapacitated. Otherwise, her co-plaintiffs would have asked the appointment of a guardian for her.

By Resolution[10] dated August 10, 2005, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In a Report and Recommendation[11] dated May 3, 2007, Commissioner Jose Roderick F. Fernando found respondent administratively liable on account of his indispensable participation in an act designed to defraud the government. He recommended that respondent be suspended from the practice of law for three months and that his notarial commission, if still existing, be revoked and that respondent be prohibited from being commissioned as a notary public for two years.

According to Commissioner Fernando, respondent did not offer any tenable defense to justify his actions. As a notary, it was his responsibility to ensure that the solemnities of the act of notarization were followed. As a lawyer, it was likewise incumbent upon him that the document he drafted and subsequently notarized was neither unlawful nor fraudulent. Commissioner Fernando ruled that respondent failed on both counts since he drafted a document that reflected an untruthful consideration that served to reduce unlawfully the tax due to the government. Then he completed the act by likewise notarizing and thus converting the document into a public document.

On June 26, 2007, the IBP Board of Governors adopted and approved Commissioner Fernando's report and recommendation but imposed a higher penalty on respondent. Its Resolution No. XVII-2007-285 reads:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A;" and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Notarial Law and for his participation to a transaction that effectively defrauded the government, Atty. Victoriano G. Pascua is hereby SUSPENDED from the practice of law for two (2) years and SUSPENSION of his Notarial Commission for two (2) years with Warning that a similar violation in the future will be dealt with severely.[12]

The above resolution is well taken.

By respondent's own account of the circumstances surrounding the execution and notarization of the subject deeds

of sale, there is a clear basis for disciplining him as a member of the bar and as notary public.

Respondent did not deny preparing and notarizing the subject deeds. He avers that the true consideration for the transaction is P1,000,000 as allegedly agreed upon by the parties when they appeared before him for the preparation of the first document as well as the notarization thereof. He then claimed to have been "moved by his humane and compassionate disposition" when he acceded to the parties' plea that he prepare and notarize the second deed with a lower consideration of P250,000 in order to reduce the corresponding tax liability. However, as noted by Commissioner Fernando, the two deeds were used by respondent and his client as evidence in a judicial proceeding (Civil Case No. 2671-S), which only meant that both documents still subsist and hence contrary to respondent's contention that the second deed reflecting a lower consideration was intended to supersede the first deed.

As to the charge of falsification, the Court finds that the documents annexed to the present complaint are insufficient for us to conclude that the subject deeds were indeed falsified and absolutely simulated. We have previously ruled that a deed of sale that allegedly states a price lower than the true consideration is nonetheless binding between the parties and their successors in interest.[13] Complainant, however, firmly maintains that she and her co-heirs had no participation whatsoever in the execution of the subject deeds. In any event, the issues of forgery, simulation and fraud raised by the complainant in this proceeding apparently are still to be resolved in the pending suit filed by the complainant and her co-heirs for annulment of the said documents (Civil Case No. 2836-S).

With his admission that he drafted and notarized another instrument that did not state the true consideration of the sale so as to reduce the capital gains and other taxes due on the transaction, respondent cannot escape liability for making an untruthful statement in a public document for an unlawful purpose. As the second deed indicated an amount much lower than the actual price paid for the property sold, respondent abetted in depriving the Government of the right to collect the correct taxes due. His act clearly violated Rule 1.02, Canon 1 of the Code of Professional Responsibility which reads:

> CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.
> X x x x
>
> Rule 1.02. - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Not only did respondent assist the contracting parties in an activity aimed at defiance of the law, he likewise displayed lack of respect for and made a mockery of the solemnity of the oath in an Acknowledgment. By notarizing such illegal and fraudulent document, he is entitling it full faith and credit upon its face, which it obviously does not deserve considering its nature and purpose.

In Gonzales v. Ramos,[14] we elucidated on how important and sacrosanct the notarial act is:

> By affixing his notarial seal on the instrument, the respondent converted the Deed of Absolute Sale, from a private document into a public document. Such act is no empty gesture. The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgement executed before a notary public and appended to a private instrument. Hence, a notary public must discharge

> his powers and duties, which are impressed with public interest, with accuracy and fidelity.[15]

Moreover, while respondent's duty as a notary public is principally to ascertain the identity of the affiant and the voluntariness of the declaration, it is nevertheless incumbent upon him to guard against any illegal or immoral arrangement or at least refrain from being a party to its consummation.[16]Rule IV, Section 4 of the 2004 Rules on Notarial Practice in fact proscribes notaries public from performing any notarial act for transactions similar to the herein document of sale, to wit:

> SEC. 4. Refusal to Notarize. - A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:
>
> (a) the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral;
>
> x x x x

In this case, respondent proceeded to notarize the second deed despite knowledge of its illegal purpose. His purported desire to accommodate the request of his client will not absolve respondent who, as a member of the legal profession, should have stood his ground and not yielded to the importunings of his clients. Respondent should have been more prudent and remained steadfast in his solemn oath not to commit falsehood nor consent to the doing of any.[17] As a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession.[18]

Respondent also failed to comply with Section 2, Rule VI of the 2004 Rules on Notarial Practice when he gave the second document the same document number, page number and book number as the first:

> SEC. 2. Entries in the Notarial Register. - x x x
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> x x x x
>
> (e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.
>
> X x x x

Respondent admitted having given the second deed the same document number, page number and book number as in the first deed, reasoning that the second deed was intended to supplant and cancel the first deed. He therefore knowingly violated the above rule, in furtherance of his client's intention of concealing the actual purchase price so as to avoid paying the taxes rightly due to the Government.

Even assuming that the second deed was really intended to reflect the true agreement of the parties and hence superseding the first deed they had executed, respondent remains liable under the afore-cited Section 2(e) which requires that each instrument or document, executed, sworn to, or acknowledged before the notary public shall be given a number corresponding to the one in his register. Said rule is not concerned with the validity or efficacy of the document or instrument recorded but merely to ensure the accuracy and integrity of the entries in the notarial register.

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.[19] Section 27, Rule 138 of the Revised Rules of Court provides:

> SEC. 27. Disbarment or suspension of attorneys by Supreme Court, grounds herefore. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or

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> other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, of for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.
>
> X x x x

In Gonzales, the notary public who notarized the document despite the non-appearance of one of the signatories was meted the penalties of revocation of his notarial commission and disqualification from re-appointment for two years. The notary in Gonzales was likewise suspended from the practice of law for one year. Said penalty was in accord with the cases of Bon v. Ziga,[20]Serzo v. Flores,[21]Zaballero v. Montalvan[22] and Tabas v. Mangibin.[23] The Court found that by notarizing the questioned deed, the respondent in Gonzales engaged in unlawful, dishonest, immoral or deceitful conduct.[24]

In the instant case, we hold that respondent should similarly be meted the penalty of suspension and revocation of his notarial commission for having violated the 2004 Rules on Notarial Practice. In line withcurrent jurisprudence, and as recommended by the IBP Board of Governors, the revocation of his notarial commission and disqualification from re-appointment as notary public for two years is in order.

With respect, however, to his suspension from the practice of law, we hold that the one-year suspension imposed in Gonzales and the other cases is not applicable considering that respondent not only failed to faithfully comply with the rules on notarial practice, he also violated his oath when he prepared and notarized the second deed for the purpose of avoiding the payment of correct amount of taxes, thus abetting an activity aimed at defiance of the law. Under these circumstances, we find the two-year suspension recommended by the IBP Board of Governors as proper and commensurate to the infraction committed by respondent.

WHEREFORE, respondent ATTY. VICTORIANO G. PASCUA is hereby SUSPENDED from the practice of law for a period of two (2) years. In addition, his present notarial commission, if any, is hereby REVOKED, and he is DISQUALIFIED from reappointment as a notary public for a period of two (2) years. He is further WARNED that any similar act or infraction in the future shall be dealt with more severely.

Let copies of this Decision be furnished all the courts of the land through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines, and the Office of the Bar Confidant, and recorded in the personal records of the respondent.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Abad, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.
Bersamin and Perez, JJ., on official leave.
Del Castillo, J., on leave.

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[1] Rollo, pp. 4-7.

[2] Id. at 8.

[3] Id. at 10.

[4] Id. at 20.

[5] Id. at 11.

[6] Id. at 23.

[7] Id. at 44.

[8] Id. at 113-130.

[9] Id. at 131.

[10] Id. at 133.

[11] Id. at 158-169.

[12] Id. at 157.

[13] Heirs of the Late Spouses Aurelio and Esperanza Balite v. Lim, G.R. No. 152168, December 10, 2004, 446 SCRA 56, 58.

[14] A.C. No. 6649,June 21, 2005, 460 SCRA 352.

[15] Id. at 357-358, citing Vda. de Bernardo v. Restauro, A.C. No. 3849, June 25, 2003, 404 SCRA 599, 603.

[16] Balinon v. De Leon, et al., 94 Phil. 277, 282 (1954).

[17] Canon 10, Rule 10.01, Code of Professional Responsibility.

Rule 10.01 -- A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[18] Donato v. Asuncion, Sr., A.C. No. 4914, March 3, 2004, 424 SCRA 199, 205.

[19] Id. at 203.

[20] A.C. No. 5436, May 27, 2004, 429 SCRA 177, 186.

[21] A.C. No. 6040, July 30, 2004, 435 SCRA 412, 416.

[22] A.C. No. 4370, May 25, 2004, 429 SCRA 74, 80.

[23] A.C. No. 5602, February 3, 2004, 421 SCRA 511, 515-516.

[24] Supra note 14 at 359.

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